

FCC MAIL SECTION

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Federal Communications Commission

DA 00-1675

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Stamps and Fouke, Arkansas)

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MM Docket No. 99-241 /  
RM-9480

**REPORT AND ORDER**  
(Proceeding Terminated)

Adopted: July 19, 2000

Released: July 28, 2000

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the Notice of Proposed Rule Making, 14 FCC Rcd 10533 (1999), issued in response to a request filed on behalf of In Phase Broadcasting, Inc. ("petitioner"), permittee of Station KLMZ(FM), Channel 282A, Stamps, Arkansas, proposing the reallocation of Channel 282A from Stamps to Fouke, Arkansas, as that community's first local aural transmission service and modification of its authorization accordingly. Petitioner filed supporting comments in response to the Notice. Additionally, consolidated comments were filed on behalf of First Broadcasting Management, LLC, Gain-Air, Inc., and KCYT-FM License Corp. (collectively "FBM").<sup>1</sup> Petitioner filed reply comments.

2. This proposal is filed pursuant to Section 1.420(i) of the Commission's Rules. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community"), 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). This would enable petitioner to provide Fouke (pop. 634),<sup>2</sup> an incorporated community that is not associated with an urbanized area, with its first local aural transmission service. The proposed reallocation of Channel 282A to Fouke is mutually exclusive with its existing authorization at Stamps (pop. 2,478). The distance between Stamps and the petitioner's specified site at Fouke is 32.5 kilometers (20 miles), whereas a minimum distance of 115 kilometers (71 miles) is required in this instance.

3. As the petitioner intends to relocate its transmitter site for Station KLMZ, it provided information regarding the potential gain area only. Therefore, the Notice requested additional

<sup>1</sup> FBM was a participant in MM Docket No. 98-198. See Cross Plains, Texas, et al., 15 FCC Rcd 5506 (2000); recon. dismissed (DA 00-1122), May 18, 2000, \_\_ FCC Rcd. \_\_ (2000). FBM advises that to avoid a conflict with the instant proposal and its counterproposal filed in MM Docket No. 98-198 proposing, inter alia, to allot Channel 282C2 to Detroit, Texas, it proposed a minor amendment to its request in the referenced proceeding to specify alternate reference coordinates for Detroit to remove the conflict. We note that FBM's proposal was adopted in MM Docket No. 98-198 to specify the allotment of Channel 282C2, Detroit, at coordinates 33-47-21 NL and 95-33-07 WL, thereby removing a conflict with the requested reallocation of Channel 282A at Fouke.

<sup>2</sup> Population figures reported herein were taken from the 1990 U.S. Census Reports..

information regarding the projected loss area if Channel 282A is removed at Stamps, as well as the reception services that are now available within the affected areas. In response, petitioner advises that the reallocation would enable Station KLMZ to increase its potential 60 dBu service to 63,940 persons as compared to service to 27,248 persons if Channel 282A remains at Stamps. Additionally, it would result in a loss of potential service to 21,689 persons. Further, petitioner asserts that while Stamps will continue to be served locally by Station KZHE(FM), Channel 263C2, both the gain and loss areas are currently provided at least five full time aural reception services.

4. Having determined the theoretical gain and loss projections under the Commission's Change of Community procedures, supra, we now compare this proposal with the existing arrangement of allotments consistent with the Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).<sup>3</sup> In making our comparison, the first two allotment priorities are not applicable to this proceeding. Fouke, which is not located within an urbanized area,<sup>4</sup> will receive its first local aural transmission service (priority 3) and therefore is favored over retention of the allotment at Stamps (priority 4). Additionally, the reallocation will enable the petitioner to increase its service area, and Stamps will continue to receive local transmission service. Therefore, in accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will modify the authorization of In Phase Broadcasting, Inc. for Station KLMZ to specify operation on Channel 282A at Fouke, Arkansas, in lieu of Stamps, Arkansas.

5. Channel 282A can be allotted to Fouke consistent with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, at the petitioner's specified city reference site at coordinates 33-15-42 NL and 93-53-06 WL.

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective September 11, 2000, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

| <u>City</u>      | <u>Channel No.</u> |
|------------------|--------------------|
| Fouke, Arkansas  | 282A               |
| Stamps, Arkansas | 263C2              |

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<sup>3</sup> The allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight is given to priorities (2) and (3).]

<sup>4</sup> As stated in the Notice, although Fouke is located near the Texarkana urbanized area, operation on channel 282A from the petitioner's intended site will not result in the provision of a 70 dBu signal to any portion of the urbanized area.

7. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the authorization of In Phase Broadcasting, Inc. for Station KLMZ (File No. BPH-19970716MD), IS MODIFIED to specify operation on Channel 282A at Fouke, Arkansas, in lieu of Stamps, Arkansas, subject to the following conditions:

- (a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

8. Pursuant to Commission Rule Section 1.1104(1)(k) and (3)(m) of the Commission's Rules, any party seeking a change in community of license of a television or FM allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, In Phase Broadcasting, Inc., permittee of Station KLMZ(FM), is required to submit a rule making fee in addition to the fee required for the application to effectuate the change in community of license at Fouke, Arkansas.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau